

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 ASHLEY CASTRO, et al.,

4 Plaintiffs,

5 v.

6 JOSE L. CASANOVA-SÁNCHEZ,
7 et al.,

8 Defendants.

Civil No. 06-1618 (JAF)

(Consolidated with
Civil No. 06-2051 (JAF))

9 **OPINION AND ORDER**

10 Plaintiffs, Ashley Castro, Sam Castro, Joey Castro, Joseph
11 Castro, and Hailey Mariel Cosme bring this diversity action for
12 wrongful death against Defendants, José L. Casanova-Sánchez, his wife
13 Jane Doe, and their conjugal partnership; Miguel Espinosa, his wife
14 Marie Doe, and their conjugal partnership; Jaime Pagán-Reymundi, his
15 wife Jane Roe, and their conjugal partnership; Espinosa Trucking;
16 MAPFRE Insurance Company; V. Suárez & Co., Inc. ("V. Suárez"); and
17 unknown insurance companies, corporations, and individuals. Case No.
18 06-1618, Docket Document Nos. 1, 37, 40; Case No. 06-2051, Docket
19 Document No. 1. V. Suárez moves for summary judgment, Case No. 06-
20 1618, Docket Document No. 60; Plaintiffs oppose, Case No. 06-1618,
21 Docket Document No. 70; and V. Suárez replies, Case No. 06-1618,
22 Docket Document No. 75. For the reasons stated below, we grant V.
23 Suárez' motion.

I.

Factual and Procedural History

We derive the following factual summary from the pleadings, depositions, and declarations on file. Case No. 06-1618, Docket Document Nos. 1, 37, 40, 60, 70, 76; Case No. 06-2051, Docket Document No. 1.

Miguel Espinosa runs a trucking service known as Espinosa Trucking. He is the partial owner of six trucks, and has a permit for the transportation of cargo from the Public Service Commission. Espinosa has run this business for the past ten or twelve years. He currently employs six drivers.

V. Suárez is a Puerto Rico corporation that distributes beverages and dry goods in Puerto Rico. For the past eight years, V. Suárez has used the services of Espinosa Trucking to transport merchandise around the island. V. Suárez requires that Espinosa carry insurance for his trucks.

There is no written contract between V. Suárez and Espinosa Trucking. Instead, when Espinosa has trucks and drivers available, he calls V. Suárez to see if there are deliveries to be made. If V. Suárez has a job for Espinosa, Espinosa selects a driver and determines the route that the driver should take to deliver the merchandise. Employees from V. Suárez load the truck and place a seal on the truck door. When the shipment reaches its destination, employees from V. Suárez break the seal, unload the truck, check the

1 merchandise, and sign paperwork confirming that the shipment was
2 complete. V. Suárez pays Espinosa Trucking on a weekly basis, and
3 Espinosa pays his employees out of that fund. Espinosa Trucking
4 completes an average of fifteen to twenty trips per week for V.
5 Suárez. V. Suárez is currently Espinosa Trucking's only regular
6 client.

7 José L. Casanova-Sánchez has worked for Espinosa Trucking for
8 the past four or five years. On December 27, 2005, Casanova-Sánchez
9 was driving a truck for Espinosa Trucking from V. Suárez' warehouse
10 in Cataño to its warehouse in Ponce. At approximately 11:25 a.m.,
11 the truck struck a motor scooter on a highway in Cataño. Pedro
12 Cosme-Rivera and Elisabeth Pérez-Valentín, the driver and passenger
13 of the motor scooter, both died of injuries sustained in the
14 collision. Prior to this collision, Casanova-Sánchez had not been
15 involved in any accidents while working for Espinosa Trucking.

16 On June 21, 2006, Ashley, Sam, Joey, and Joseph Castro filed a
17 complaint in federal district court, seeking damages for the wrongful
18 death of Pérez-Valentín. Case No. 06-1618, Docket Document No. 1.
19 On October 17, Cosme filed a complaint in federal district court,
20 seeking damages for the wrongful death of Cosme-Rivera. Case No. 06-
21 2051, Docket Document No. 1. The district court consolidated these
22 cases on December 5, 2006. Case No. 06-2051, Docket Document No. 5.
23 Ashley, Sam, Joey, and Joseph Castro amended their complaint on
24 January 8, 2007. Case No. 06-1618, Docket Document No. 37. Cosme

1 amended her complaint on January 11, 2007. Case No. 06-1618, Docket
2 Document No. 40. V. Suárez filed a cross-claim against Espinosa
3 Trucking, MAPFRE Insurance Company, Espinosa, and Casanova-Sánchez,
4 demanding indemnity should it be found liable in the underlying
5 lawsuit. Case No. 06-1618, Docket Document No. 58. V. Suárez moved
6 for summary judgment on October 23, 2007, Case No. 06-1618, Docket
7 Document No. 60; on February 5, 2008, Plaintiffs jointly opposed,
8 Case No. 06-1618, Docket Document No. 70; and on February 26, 2008,
9 V. Suárez replied, Case No. 06-1618, Docket Document No. 75.

10 II.

11 Motion for Summary Judgment Standard under Rule 56(c)

12 We grant a motion for summary judgment "if the pleadings, the
13 discovery and disclosure materials on file, and any affidavits show
14 that there is no genuine issue as to any material fact and the movant
15 is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).
16 A factual dispute is "genuine" if it could be resolved in favor of
17 either party, and "material" if it potentially affects the outcome of
18 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19
19 (1st Cir. 2004).

20 The moving party carries the burden of establishing that there
21 is no genuine issue as to any material fact; however, the burden "may
22 be discharged by showing that there is an absence of evidence to
23 support the nonmoving party's case." Celotex Corp. v. Catrett, 477
24 U.S. 317, 325, 331 (1986). The burden has two components: (1) an

1 initial burden of production, which shifts to the nonmoving party if
2 satisfied by the moving party; and (2) an ultimate burden of
3 persuasion, which always remains on the moving party. Id. at 331.

4 In evaluating a motion for summary judgment, we must view the
5 record in the light most favorable to the non-moving party. Adickes
6 v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). However, the non-
7 moving party "may not rely merely on allegations or denials in its
8 own pleading; rather, its response must . . . set out specific facts
9 showing a genuine issue for trial." FED. R. CIV. P. 56(e)(2).

10 **III.**

11 **Analysis**

12 Defendant V. Suárez argues that it cannot be held liable for
13 Casanova-Sánchez' accident because Casanova-Sánchez worked for
14 Espinosa, an independent contractor of V. Suárez. Case No. 06-1618,
15 Docket Document No. 60. Plaintiffs counter that (1) V. Suárez is
16 directly liable for the accident for failing to take adequate safety
17 precautions with respect to the delivery trips; and (2) V. Suárez and
18 Espinosa had a de facto employer/employee relationship, making V.
19 Suárez vicariously liable for the negligence of Espinosa's employees.
20 Case No. 06-1618, Docket Document No. 70.

21 **A. Direct Liability**

22 Plaintiffs contend that V. Suárez is directly responsible for
23 the accident because it failed to take adequate safety precautions.
24 Case No. 06-1618, Docket Document No. 70.

1 Under Puerto Rico law, to state a claim for negligence, a
2 plaintiff must show (1) an act or omission constituting negligence;
3 (2) damages; and (3) causation. 31 L.P.R.A. § 5141 (1990); López v.
4 Nutrimix Feed Co., 27 F. Supp. 2d 292, 297-98 (D.P.R. 1998) (citing
5 Smith v. Williams Hospitality Management Corp., 950 F. Supp. 440, 445
6 (D.P.R. 1997) and Sociedad De Gananciales v. González Padín, 117
7 P.R. Dec. 94, 106 (1986)). An act or omission constitutes negligence
8 when the defendant had a duty to the plaintiff and failed to act as
9 a reasonably prudent person would in similar circumstances. Id.
10 (citing Jiménez v. Pelegrina Espinet, 112 P.R. Dec. 700, 704 (1982)).

11 An employer is directly liable for the damages caused by an
12 employee or independent contractor while performing work that the
13 employer should recognize as likely to create a peculiar risk of harm
14 to third parties. López v. Cruz Ruiz, 131 P.R. Dec. 694, 705 (1992).
15 However, the Puerto Rico Supreme Court has limited the direct
16 liability of employers for the negligence of employees or independent
17 contractors. Id. In Cruz Ruiz, the city of Cataño contracted with
18 an independent contractor to clear a vacant lot using a truck. Id.
19 at 698. While clearing the lot, the truck driver struck and injured
20 a child. Id. The Court held that Cataño was not liable because the
21 activity of clearing a vacant lot involved no reasonably foreseeable
22 risk of injury to third parties. Id. at 708. The Court reasoned
23 that the injuries were directly attributable to the driver's failure
24 to take adequate safety measures while driving, not to dangers

1 normally inherent in clearing a lot. Id. The Court further stated
2 that the fact that a truck was used did not add any peculiar risk
3 requiring special precautions. Id.

4 Here, Plaintiffs argue that driving a truck “foreseeably
5 involves special precautions in the driving skills needed to avoid
6 damage to third part[ies].” Case No. 06-1618, Docket Document No.
7 70. This argument is directly foreclosed by the Puerto Rico Supreme
8 Court’s holding in Cruz Ruiz. See 131 P.R. Dec. at 708. Therefore,
9 we find that V. Suárez is not directly liable to Plaintiffs for
10 failing to take adequate safety precautions with respect to the
11 delivery trips.

12 **B. Vicarious Liability**

13 Plaintiffs argue that V. Suárez is vicariously liable for the
14 negligence of Espinosa’s employees because Espinosa is a de facto
15 employee of V. Suárez. Case No. 06-1618, Docket Document No. 70.

16 Under Puerto Rico law, employers are vicariously liable for
17 torts committed by employees, but generally are not liable for torts
18 committed by independent contractors. 31 L.P.R.A. § 5142 (1990). We
19 look to the totality of the circumstances to determine whether a
20 tortfeasor is an employee or an independent contractor. Nutrimix, 27
21 F. Supp. 2d at 297-98 (citing Torres Vargas v. Santiago Cummings, 149
22 F.3d 29, 32 (1st Cir. 1998)). We are guided by several general
23 factors, which include (1) the extent and nature of control executed
24 by the employer; (2) whether the employment contract is full-time or

1 part-time; (3) whether the employment contract provides for vacation
2 time or sick leave; (4) the form of payment; and (5) who owns the
3 equipment used. Id. (citing Rivera v. Hosp. Universitario, 762 F.
4 Supp. 15, 17 (D.P.R. 1991)). The most important factor is the level
5 of control possessed by the employer. Id. (citing Lugo v. Matthew
6 Bender & Co., 579 F. Supp. 638, 642 (D.P.R. 1984)); Cruz Ruiz, 131
7 P.R. Dec. at 704.

8 In the current case, V. Suárez exerts only very limited control
9 over Espinosa's business. V. Suárez requires that Espinosa carry a
10 transportation permit and liability insurance. Case No. 06-1618,
11 Docket Document No. 76-2. V. Suárez employees also supervise the
12 loading and unloading of the merchandise. Id. However, Espinosa
13 generally calls V. Suárez to see if there are deliveries to be made;
14 Espinosa determines the route that the drivers follow; and Espinosa
15 decides which driver will make the trip. Case No. 06-1618, Docket
16 Document Nos. 60-4, 76-2. This factor therefore weighs in favor of
17 a finding that Espinosa is an independent contractor.

18 Turning to the other factors, V. Suárez is Espinosa's only
19 client, and V. Suárez pays Espinosa on a weekly basis. Docket Case
20 No. 06-1618, Document Nos. 60-4, 76-2. These factors point toward a
21 finding that Espinosa is an employee. See Nutrimix, 27 F. Supp. 2d
22 at 298-99. However, there is no written contract between V. Suárez
23 and Espinosa, and Espinosa owns the trucks his company uses. Case
24 No. 06-1618, Docket Document No. 60-4. These factors point to a

1 finding that Espinosa is an independent contractor. See Nutrimix, 27
2 F. Supp. 2d at 298-99.

3 Based on the totality of the circumstances, and taking into
4 account the lack of control V. Suárez possesses over Espinosa's
5 business, we find that Espinosa is an independent contractor, not an
6 employee, of V. Suárez. Therefore, V. Suárez is not vicariously
7 liable for the torts committed by Espinosa's employees.

8 **IV.**

9 **Conclusion**

10 In accordance with the foregoing, we **GRANT** V. Suárez' motion for
11 summary judgment, Case No. 06-1618, Docket Document No. 60. We,
12 therefore, dismiss V. Suarez' cross-claims, Case No. 06-1618, Docket
13 Document No. 58, as moot. Partial judgment to be entered accordingly.

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 13th day of June, 2008.

16 S/José Antonio Fusté
17 JOSE ANTONIO FUSTE
18 Chief U.S. District Judge